

**PATENT
APPLICATION 10/737,289
ATTORNEY DOCKET 2002-0377 (1014-046)**

REMARKS

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

The Title has been amended to correct matters of form. It is respectfully submitted that no new matter has been introduced.

Each of claims 1, 2, 8, 15, 16, 19, and 20 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1-20 are now pending in this application. Each of claims 1, 19, and 20 is in independent form.

I. The Objection to the Specification

In the Office Action, the Title was objected to because it contains acronyms. This objection is respectfully traversed as moot in view of the present amendments to the Title. Therefore, it is respectfully submitted that any grounds for this objection have been removed, and acknowledgment thereof is respectfully requested.

II. The Obviousness Rejections

Each of claims 1-20 was rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of U.S. Patent 20010032270 ("Koo"), U.S. Patent 6,324,279 ("Kalmanek"), and/or U.S. Patent 6,697,475 ("MeLampy"). Each of these rejections is respectfully traversed as moot in view of the present amendments to each of independent claims 1, 19, and 20.

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Specifically, each of claims 1, 19, and 20 states, *inter alia*, yet no substantial evidence is presented that any applied portion of the relied-upon references, alone or in combination, teaches, "the VoIP channelized router adapted to terminate an IP packet call to a DS0 assignment".

Applicant also respectfully notes that the present Office Action fails to evidence the scope and contents of the prior art as required under *Graham*. The present Office Action fails to even identify what "the pertinent art" is. Moreover, the present Office Action fails to evidence the level of ordinary skill in the pertinent art.

Applicant respectfully traverses the failure of the present Office Action to comply with the requirements of *Graham* and thereby, to provide a *prima facie* rejection under 35 U.S.C. 103.

Applicant further notes that the present Office Action fails to provide any evidence of, from the perspective of one of ordinary skill in the art, a "rational underpinning, to combine the known elements in the fashion claimed in the patent at issue". Moreover, no evidence is presented that the unsupported assertions of the present Office Action were "known in the prior art", as required by *KSR International Co. v. Teleflex Inc.*, 2007 U.S. LEXIS 4745 (2007) (*quoting In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006)). Applicant respectfully notes that under *KSR* "rejections on obviousness grounds cannot be sustained by mere conclusory statements". The present Office Action only provides such conclusory statements regarding the proffered combinations of the applied portions of the relied-upon references.

For example, regarding claim 1, the present Office Action merely asserts, at Page 3:

[a]t the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teachings of McLampy et al with Koo so that the robbed bit signaling may be buried in the voice data.

Applicant respectfully submits that unfounded assertions such as this fail to provide evidence required under *KSR* regarding evidence of obviousness. For at least these reasons, Applicant respectfully submits that no *prima facie* rejection is established for any of claims 1-20.

III. Next Office Action

If an Office Action fails to set forth sufficient facts to provide a *prima facie* basis for the rejections, any future rejection based on the applied reference will necessarily be factually based

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on an entirely different portion of that reference, and thus will be legally defined as a "new grounds of rejection." Consequently, any Office Action containing such rejection can not properly be made final. *See, In re Wiechert*, 152 USPQ 247, 251-52 (CCPA 1967) (defining "new ground of rejection" and requiring that "when a rejection is factually based on an entirely different portion of an existing reference the appellant should be afforded an opportunity to make a showing of unobviousness vis-a-vis such portion of the reference"), and *In re Warner*, 379 F.2d 1011, 154 USPQ 173, 178 (CCPA 1967) (the USPTO "has the initial duty of supplying the factual basis for its rejection").

Since the present Office Action fails to establish a *prima facie* rejection of any of claims 1-20, the next Office Action regarding this claimed subject matter cannot properly be made final.

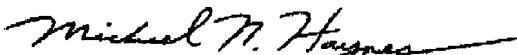
CONCLUSION

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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Date: 09 October 2007

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